UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/C.12/2002/5
5 February 2002

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS
Twenty-eighth session
Geneva, 29 April-17 May 2001
Item 3 of the provisional agenda

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Day of General Discussion on article 3 of the Covenant: equal right of m a and women to the enjoyment of economic, social and cultural rights set forth in the ICESCR

Monday, 13 May 2002

EQUALITY AND RIGHTS:

ARTICLE 3 OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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* The views expressed in the present document are those of the author and do not necessarily reflect those of the United Nations.

** Issued as submitted.

GE.02-40432 (E) 210202

INTRODUCTION: THE NEED FOR A GENERAL COMMENT ON EQUALITY*

The States parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant[1]

1. Article 3 of the International Covenant on Economic, Social and Cultural Rights provides for equality in the enjoyment of all the rights stated in the Covenant. The Committee on Economic, Social and Cultural Rights has taken this article seriously but has yet to examine the obligation closely. Many of the Committee's reviews of country reports have included questions, and produced concluding observations, on issues pertaining to women's enjoyment of human rights. However, a clear framework for addressing these issues has yet to be developed.

2. As Philip Alston[2] remarked in a forum at the World Conference on Human Rights in 1993, no government has ever granted human rights solely of its own volition. Almost invariably, rights are granted only when citizens claim them.[3] As to women, this premise is incontrovertible. As has been documented by countless scholars and activists in the last two decades, women's human rights have been at best ignored, and more often overtly denied, since time immemorial. And given their historic invisibility in the "mainstream" of human rights activity for the last 50 years, general progress in human rights does not automatically benefit women. It cannot be assumed that changes in law and policy, made without attention to women's specific circumstances and the consequences in their lives, will have a positive impact on their situation.[4]

3. A framework for addressing obligations under article 3 is necessary to provide for consistency and specificity in the Committee's treatment of equality issues under every substantive article of the Covenant. It would give to governments an unequivocal mandate to attend to equality issues as a matter of normative rights, indicating that every effort to implement the Covenant must include positive attention to the elimination of discrimination with respect to enjoyment of particular rights.

4. This paper is submitted in support of efforts to provide a framework for application of ICESCR article 3, in the form of a General Comment on Equality between Women and Men in the Enjoyment of Economic, Social and Cultural Rights.

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* I am indebted to a number of valued colleagues for their insightful and careful contributions to the content of this paper: Beate Schoepp-Schilling, Frances Raday, Kristen Timothy, Veronica Matus, Shanthi Dairiam, Shelagh Day and the Women's Economic Equality Project, Laura Katzive, and IWRAW Research Director Kasia Polanska. They are responsible for improvements, and I remain responsible for shortcomings. I also am more than indebted to CESCR Chairperson Virginia Dandan, who encouraged the production of this paper and has devoted endless thought and energy to the forthcoming production of the General Comment on article 3. And all of us owe much to IWRAW research assistant Jeffrey Baldwin-Bott, who has gone on to great endeavours.

THE TERMINOLOGY AND THE CONTENT OF EQUALITY

5. The language of ICESCR article 3 derives directly from article 2 of the Universal Declaration of Human Rights.[5] Despite having been enshrined in this basic human rights instrument, equality between women and men is honoured more in the breach than in the observance.

6. The official account of the debate on adoption of this provision in the Third Committee indicates the scope of the problem and the necessity of a separate provision on equality between women and men:

> 84. Some representatives thought that article 3 duplicated article 2, paragraph 2, and that the adoption of a special article relating exclusively to the equality of men and women might cause doubt on the effect of the other anti-discrimination provisions contained in article 2. It was maintained that the application of absolute equality of the economic rights of men and women might jeopardize national productivity and encourage too many women to work outside their homes. It was usually less profitable for the employer to employ women, while in their capacity as wives and mothers women were needed in the home, especially by the children.
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> 85. On the other hand, many representatives thought it was essential to retain article 3. The Committee must respect the wish of the General Assembly, expressed in resolution 421 (V), concerning the inclusion of such a provision. While article 2, paragraph 2, prohibited all discrimination based on sex, the same rights should be expressly recognized for men and women on an equal footing and suitable measures should be taken to ensure that women had the opportunity to exercise their rights; for example, it would be unrealistic to allow women to hold public office if they did not have the same opportunities as men to acquire the necessary training. Moreover, even if article 3 overlapped with article 2, paragraph 2, it was still necessary to reaffirm the equal rights of men and women. *That fundamental principle, which was enshrined in the Charter of the United Nations, must be constantly emphasized, especially as there were still many prejudices preventing its full application* [emphasis added].[6]

7. These statements, dating from 1962, retain currency. While prohibition of discrimination as stated in article 2 (2) is critical, "equal enjoyment" of rights encompasses a larger vision of what it means to have rights. As discussed below, the terminology of "enjoyment" implies recognition of full human capacity - for work, leisure, reproduction, and above all for making and acting upon choices.

8. In the 26 years since the Covenant entered into force, many countries have adopted constitutional provisions and laws that purport to enshrine equality as a fundamental principle. Some laws provide for formal equality in a positive manner, such as requiring equal property division upon divorce, equal inheritance rights for sons and daughters or for surviving husbands and wives, or equal pay for work of equal value. Prohibition of discrimination in the workplace (promotion and training opportunities, wages, issues surrounding maternity leave), in education,

or in assignment of government benefits, reaches for equality through the operational principle of non-discrimination. Neither the positive nor the prohibition approach can be successful without consideration of gender, the social construct of role expectations that pervades systems, institutions, and human attitude towards women and men.[7]

9. Reliance on expressions of formal equality, or on legal prohibition of discrimination, obscures the real issues of inequality - institutional discrimination and unequal power relationships that result in oppression and exclusion. Implementation of ICESCR article 3 requires governments to identify the sites of discrimination in economic, social and cultural endeavours and to immediately address the legal, material and cultural obstacles to equality.

The substance of equality

10. The language of article 3 indicates that equality is a value that must be integrated into every aspect of Covenant implementation. Government obligations to respect, to protect, and to fulfil[8] economic, social and cultural rights are grounded in a fundamental requirement to ensure that all persons within the ambit of its actions be treated in a manner that guarantees equality in enjoyment of rights. Enjoyment of rights refers immediately and unequivocally to the substance of the rights as well as to their formal expression, to outcomes and consequences as well as to access and opportunity.[9]

11. The "enjoyment" of human rights may be measurable in some respects, and to the extent that it is measurable, "equal enjoyment" can be determined as a matter of numbers.[10] But numbers never tell the entire story. For example, equal literacy rates for men and women say nothing about the content of their education and expectations for its use. Equal wages for men and women doing a particular type of work do not indicate their comparative working conditions or work history (how long did each work in this job before achieving this wage?). Formal equality provisions and statistical indicators provide only a verbal and numerical framework. States parties to the Covenant have an obligation to provide the legal and material means for women to enjoy rights on an equal basis with men, and to address the cultural and structural issues that create obstacles to exercising rights.

12. To "enjoy" a right means just what the English word implies: to live in it, to express it, to use it, and above all, to be able to claim it. Enjoyment of a right cannot be static. Nor can equality in enjoyment of rights be static. As to every aspect of a particular right, the questions must consistently be asked: Are women allowed to live this right? to express it freely? to use it? What are the specific obstacles - material conditions, laws, cultural expectations - to women's enjoyment of the rights, and how can they be removed? What practical effect will a particular law or policy change have on women? What must we do to eliminate the current disadvantage women face as a result of past discrimination? How do we maintain attention to equality as economies and cultures change? In other words, are women treated with full respect for themselves as human beings and for their rights as articulated in the Covenant?

13. Because women's enjoyment of every aspect of rights is affected by the cultural construct of gender, equality cannot be addressed adequately without attention to culture and to gender. Development expert Bina Agarwal suggests the comprehensive nature of gender as a construct that pervades public and private economic, social and political interactions.

"Gender relations (like all social relations) embody both the material and the ideological. They are revealed not only in the division of labour and resources between women and men, but also in ideas and representations - the ascribing to women and men of different abilities, attitudes, desires, personality traits, behaviour patterns, and so on."[11] Social and cultural expectations based on identification as male and female are at the heart of discriminatory laws, policies, actions, and failures to act. These gendered expectations place women at a fundamental disadvantage with respect to freedom to act as fully capable adults, to participate fully in economic and political development, and to make decisions concerning their welfare and that of their families. They perpetuate inequality.

14. Inequality between women and men is a result of the individual and systemic practice of sex discrimination. Sex discrimination is the differential treatment of women based on their biology, such as the failure to provide for maternity-related health care where men receive care for all medical conditions, including those that affect only men, or refusal to hire women because they could become pregnant. Sex discrimination is also based on stereotypical assumptions, such as the refusal to hire women or tracking them into permanently low-level jobs because they are seen as a group to be primarily wives and mothers and less likely than men to be dedicated to their work. And it is based on unacknowledged issues of power retention, exemplified by failure in many systems to provide property rights or equal legal capacity for women. Acknowledgment of all these assumptions and forms of oppression is essential to the elimination of discrimination.

15. The elimination of discrimination against women is a fundamental operational precondition of equality.[12] In this context reference to the Convention on the Elimination of All Forms of Discrimination against Women is critical to effective implementation of the ICESCR.[13] The CEDAW Convention identifies the obstacles to women's equal enjoyment of human rights, framed as sites of discrimination in policy and practice. Each article of the CEDAW Convention that pertains to economic, social or cultural rights includes language indicating significant factors in the gender aspects of those rights. The CEDAW Committee's General Recommendations - most recently, General Recommendation No. 24, on health - elaborate on this language, providing more detailed guidance for addressing discrimination as to certain rights. The language of the Convention and of the General Recommendations suggests specific opportunities for changing law and policy and for considering practical matters such as the design of service delivery and administrative systems to avoid disadvantage, exclusion or mistreatment of women and girls.

Economic development and equality

16. Equality in enjoyment of economic, social and cultural rights is a core development issue. Seventy percent of the world's poorest people are women.[14] Poverty is a consequence of failure to protect and promote human rights - not only economic and social rights, but political and civil rights as well.

17. Amartya Sen characterizes fundamental rights as "freedoms" that are instrumental to development as well as its desired result. Seeing individuals as agents of their lives rather than potential recipients of "the benefits of cunning development programmes", Sen notes that freedoms are inextricably linked with one another: "political freedoms … help to promote economic security. Social opportunities (in the form of education and health facilities) facilitate

economic participation ...".[15] Sen identifies five instrumental freedoms as critical to individual agency and to sustainable development: (1) political freedoms, (2) economic facilities, (3) social opportunities, (4) transparency guarantees and (5) protective security.[16] If development policy fails to extend all these freedoms equally to the entire population, development becomes (often systemically) distorted and unsustainable.

18. Policies that seek undifferentiated national income and consumption growth can place an extra burden on women, both by failing to provide for family needs such as child care and health facilities, and by focusing on increasing productivity in sectors in which women are exploited or are excluded from deploying their labour. Gendered traditions relating to production can mean that a shift to cash or export cropping from subsistence or local market farming, or from farming to manufacture, can shift resources from women to men. In communities where women are primarily responsible for feeding the family, this form of development reduces women's power in the household as well as having detrimental effects on food security and nutrition. Women's employment in free trade zones increases national productivity figures but is notoriously exploitive.

19. Gross Domestic Product as a primary indicator of growth, fails to differentiate as to the condition of individuals within households and communities. Economic growth in China, for example, has not noticeably diminished the level of neglect and discrimination against girls in Chinese households - resulting in what Sen refers to as millions of "missing" women.[17] Even more refined research approaches evaluate economic well-being on a household basis, without addressing heterogeneous preferences or unequal distribution of resources within households. As Naila Kabeer notes, "a gender perspective on poverty reminds us that household income cannot be equated with individual well-being."[18]

20. Poverty eradication requires that economic, social and cultural rights be respected, protected and fulfilled as between members of households and members of communities. Recognition of rights implies recognition of the capacity for choice, the ability to act in the best interest of self, family and community. Recognition of that capacity results in a rebalancing of interests within the family, allowing for greater respect for women and improved access to resources and opportunities. Sen notes that where women have increased choice in access to resources and to education, their own well-being improves, fertility drops and child survival increases.[19]

Equal Access/ Equal Outcome

21. Conceptualization of equality as a matter of formally providing access or opportunity leads to policy that fails to address the entire problem. The equal access approach often does not result in equal outcomes. Securing for women and men equal access to, for example, health care (ICESCR article 12) or primary education (ICESCR articles 13 and 14), often does not result in equal outcomes. Attitudes and quality of staff, failure to tailor programmes to realities of women's working hours or family requirements, and content of educational programmes has a profound effect on outcomes. While the failure of equal access to produce equal outcomes is frequently attributed to a lack of "truly equal" access, *there is nothing inherent in equal access that corrects for past inequalities or automatically ends discriminatory attitudes, treatment and delivery systems.*

22. Policies and programmes that aim to secure equal outcomes for men and women also must include special measures to eliminate the effects of discrimination: intensive efforts to recruit women; long-term support for women's training, promotion and retention; monitoring retention and progress; and remedies for discriminatory treatment. The Covenant does not explicitly refer to this requirement of implementation, but it is implicit in every obligation.[20] As CEDAW Committee expert Beate Schoepp-Schilling notes, the obligation to take "all appropriate measures" to eliminate discrimination against women, by definition includes a requirement to remedy the effects of past discrimination. Any other approach renders the language of treaty obligations meaningless.[21] The ICESCR requires States parties to "take steps … with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures" (art. 2 (1)).

23. An effective approach to equality requires a reordering of traditional conceptual frameworks. Historically, governments and many advocates relied on the simplest concept, the "sameness" analysis, to analyse women's claims of discriminatory treatment. According to this approach, individuals are entitled to the same treatment only if their situation is the "same", and different treatment is warranted if they are differently situated. This approach is both blindly mechanistic and in itself discriminatory, in that it eliminates examination of the nuanced realities of people's lives. One of the most egregious examples of this analysis was the 1976 US Supreme Court decision in *General Electric Co. vs. Gilbert*,[22] holding that failure to provide insurance coverage for pregnancy and childbirth, was not sex discrimination. The Court stated that since non-pregnant women were treated the same as men under the company's insurance policy, no discrimination existed; and that it was appropriate to treat pregnant women differently as they constituted a different class of employee. (The US Congress rectified this gross misreading of reality with passage of legislation mandating maternity coverage.)[23]

24. In the 1970s and 1980s many Northern-based feminists, accepted the "sameness" analysis out of concern that emphasis on women's biological and circumstantial difference from men would work against them as they sought to establish new opportunities in opposition to traditional career and family expectations. But it became clear that denying difference did not necessarily improve women's opportunities - especially since that approach precluded examination of deep-seated, unspoken attitudes and customs that work against women. Theorists from the global South have been pointing out for over a generation the injustice that results from failing to acknowledge women's different circumstances and the traditional assumptions that cause and reinforce them.[24]

25. Naila Kabeer, for example, holds that "the gender dimension of poverty occurs ... because women and men experience poverty differently and unequally".[25] She also notes that a woman's socio-economic class significantly affects her level of empowerment in comparison to other women.[26] In *A Field of One's Own: Gender and Land Rights in South Asia*, Bina Agarwal has addressed specific cultural and legal exclusionary practices in South Asia that differentiate South Asian women's experiences from those of women in other regions of the world.[27] Everywhere in the world, indigenous and minority women live with the effect of race discrimination multiplying the effect of sex discrimination.

26. A comprehensive, ultimately just approach to equality must embrace an understanding of the areas in which women are or might be similarly situated with men; areas in which acknowledging their physical and situational differences are critical to their enjoyment of rights; the cultural constructs that impede enjoyment of rights; and the impact of class, race, and experience on women's enjoyment of rights.

27. "Equal enjoyment" of human rights implies quite clearly equality between women and men rather than a contest between them. It implies respect for equal capacities and a requirement of equality in allocation of resources. Redressing the imbalance of economic, social and cultural power between women and men would result in men no longer having access to a disproportionate share of resources and services at the expense of women. Equality in allocation cannot be seen as a violation of rights - it is only a loss of privilege. The essence of human rights is that no person holds a privilege of greater enjoyment of rights than another.[28]

Institutionalizing equality

28. An institution is the physical and intellectual space in which policies are made and implemented. The cultural and socio-political conditions that affect policy must be acknowledged as integral to any institutional framework. Equality must be built into the intellectual and ethical framework of institutions, and policy must be based on the right to be treated without discrimination. Minor adjustments to achieve particular outcomes will not solve the problem.

29. The nature of institutional administration, structures and instruments is critical to the equal enjoyment of rights. Policy formulation and adjustment, while extremely important, are not the whole solution to discriminatory attitudes, practices and patterns. Administrative communication flow, education and training of personnel, and supervision of service delivery are critical elements of "lived" equality for which a State party is obligated.

30. Human rights frameworks are premised on the position of the state as the primary institutional actor responsible for implementation of human rights obligations. With the growth of international markets and trade organizations, international financial institutions, and transnational corporations as arbiters of development and centres of economic power, the role and capacity of the state to meet certain human rights obligations has been called into question.

31. The Committee on Economic, Social and Cultural Rights has noted the rising importance of these actors in the accumulation and distribution of resources.[29] It cannot be assumed that people who have been historically disadvantaged with respect to resource allocation and access will benefit from economic growth without state interventions to ensure equality. Indeed, structural adjustment policies and unregulated business development frequently make their situation worse. State interventions must be designed to address equality and rights issues specifically, recognizing and building upon women's capacity as citizens - active agents of development, rather than passive recipients - in relation to state and other institutions.[30]

Obligations to respect, to protect, and to fulfil human rights

32. Implementation of the ICESCR requires that States parties act to respect, protect, and fulfil the stated rights.[31] South African attorney Sandra Liebenberg provides useful examples of the nature of these obligations, as they pertain to gender, from her country's experience.

33. In essence the obligation "to respect" ... rights requires the state not to act in any way that is inconsistent with the enjoyment of the rights, such as failing to include women as potential beneficiaries of State programmes to redistribute wealth, including land. Liebenberg notes in this respect that "the State should not permit common law or customary law rules with a similar exclusionary effect to remain in place ... [such as] customary law provisions which restrict a woman's capacity to own, control and inherit rights in property in her own name."[32]

34. The duty to protect rights requires adoption of laws and policies that prevent third parties from infringing on or denying women's human rights, such as legislation prohibiting discrimination in employment, protection of equality in the family,[33] and comprehensive domestic violence laws. Such protections are incomplete without incorporation of adequate remedies for discriminatory practices.[34]

35. The duty to fulfil requires States parties to take positive action to provide services and goods, with a view towards meeting certain minimum standards of subsistence, and with the understanding that the cost issues warrant a standard of effort concomitant with a country's resources.[35] States have an obligation to maintain a certain level of human rights fulfilment even while devolving central government functions to localities, and in the face of demands by international financial institutions that they make greater efforts to balance their budgets. With respect to the demands for structural adjustment and poverty reduction strategies, States must analyse all program proposals in light of their specific impact on women's equal enjoyment of rights.

36. The principle of progressive implementation clearly does not apply to the premise of equal enjoyment of rights under ICESCR article 3. The language of article 3 is mandatory. Progressive implementation applies specifically to the articles in Part III of the Covenant and not to the cross-cutting issues articulated in Parts I and II.[36]

37. The terms of the CEDAW Convention underscore the obligation to take measures to "eliminate discrimination" in all endeavours on which State policy can have an effect, immediately and unequivocally. While the CEDAW Committee has acknowledged the constraints imposed by lack of resources, governments are not permitted to use poverty as an excuse for failure to deal with discrimination.[37]

EQUALITY ISSUES ON THE RECORD

38. The Committee's concluding observations, analysing the condition of economic, social and cultural rights in each country under review, identify the notable accomplishments and some of the remaining inadequacies in Covenant implementation. Many of the Committee's observations have touched upon issues of equality in the enjoyment of these rights.

39. The Committee has noted both the instances in which national laws and policies undercut or render ineffectual the promise of gender equality guaranteed by the Covenant, and instances of successful efforts to deal with discrimination. However, without a consistent flow of information on gender issues and a framework for using the information, the approach has been less than comprehensive. A General Comment on Equality would provide a framework for consistent and comprehensive attention to these issues.

40. Many of the Committee's questions and concluding observations have included insightful identification of discriminatory institutional structures and trends in the form of traditional attitudes, ineffective delivery systems and tolerance of discrimination. The Committee has almost from its inception welcomed input from NGOs concerning implementation of rights in countries under review. Information from international and national gender-focused NGOs has been used in more recent years to track positive and negative trends in the equal enjoyment of the rights articulated in the Covenant. The Committee also has cited information from State parties' reports to CEDAW in its Concluding Comments, most recently to Mauritius (07/10/96) and Saint Vincent and the Grenadines (02/12/97).

41. The Committee's concluding observations have noted positive efforts and results in a number of countries. For example, as to Tunisia, the Committee noted:

> The Committee welcomes the achievements in the field of better promotion and protection of the economic, social and cultural rights of women, as a result of which women are able to participate in the economic and political life of the nation, including by owning property, engaging in economic transactions, voting and being elected to public office. In addition, these achievements have contributed positively to family life by making polygamy illegal and has further promoted equality between men and women by removing all legal recognition of so-called "crimes of honour".[38]

42. Government efforts to promote equal enjoyment of human rights and specific legal and policy changes are regularly acknowledged in the concluding observations. The Netherlands was cited positively for its efforts to promote equality in education, but the Committee noted continuing inequality in the workplace.[39] The Dominican Republic's "measures ... to improve the situation of women", were noted with appreciation, "in particular measures allowing them to own property and to benefit from the medical insurance of their partners in case of de facto marriages and from land distribution in the framework of the agrarian reform", although "the Committee remains concerned that women do not fully enjoy their economic, social and cultural rights under the Covenant".[40]

43. Recommendations for improvement in implementation of women's economic, social and cultural rights are greater in number. A table indicating instances in which the Committee has found a State party's implementation efforts wanting is attached as Annex A. The discussion in paragraphs 44-48 refers to the contents of that table. Further discussion in the Annex examines trends in the Committee's findings, specific examples under the substantive articles, and sites of discrimination not yet examined by the Committee.

44. The Committee has identified a number of sex-based discriminatory practices and attitudes for which States parties have responsibility. The most common finding has been the centrality of cultural and traditional practices, attitudes and beliefs to the persistence of sex discrimination.

45. Tradition and cultural factors provide the underpinnings of discriminatory laws and official policies and undermine non-discriminatory legislation and constitutional guarantees of equality. The failure of a State party to implement existing legal provisions, the inadequate use of mechanisms that prohibit discrimination, or the hesitancy of officials to intervene in criminal behaviour against women (the Russian Federation 20/05/1997, Togo 09/05/2001), frequently are identified as based on cultural factors. More specific examples of both statutory and customary discrimination are included below in the analysis of the Committee's comments regarding the substantive articles of the ICESCR.

46. The Committee has identified several cases of discrimination that result from inadequate or incomprehensive strategies to end discrimination (Italy 23/05/2000, United Kingdom of Great Britain and Northern Ireland 04/12/97). Another reason discrimination persists is the failure to collect (Finland 5/12/96, Venezuela 11/05/2001, Tunisia 14/05/99, Sweden 07/06/95, Sudan 01/09/2000, Jordan 01/09/2000, Egypt 23/05/2000), analyse (Netherlands 16/06/1998), or disaggregate by sex (Azerbaijan 22/12/97) data that might identify discrimination. Even when data are available, the Committee frequently expressed concern that women lack access to them (Sri Lanka 16/06/98). The most frequent data requested by the Committee are statistics regarding employment and domestic violence. The failure to address de facto discrimination against women was also commonly cited, as in the Concluding Observations to Bolivia, Honduras, Argentina, Switzerland, Zimbabwe, the United Kingdom of Great Britain and Northern Ireland, and Portugal.

Industrialized nations: no release from responsibility

47. Though the noted incidence of sex-based discrimination has been greater and often more severe in developing countries, the Committee has identified patterns of discrimination in industrialized nations as well. The most common problem the Committee has identified is discrimination against women in the workplace. The Committee expressed concern with a number of industrialized nations (see Table, Annex A) for their failure to ensure women equal remuneration and benefits for equal work, as well as their failure to remove obstacles from the promotion of women to prominent managerial and administrative positions, in both the public and the private sectors.

48. The persistence of domestic violence against women also has been consistently identified by the CESCR as a major problem in industrialized nations. Domestic violence is listed as a separate column in the Table to indicate the number of industrialized nations that have been asked to review, amend, develop, or implement policies and remedies that protect women both from domestic violence and from its detrimental effects on their physical and mental health. The Committee has recognized that domestic violence affects a woman's right to an adequate standard of living as well. In the case of Canada, the Committee recommended in 1998 that the Government review its housing policy, which discriminates against women seeking to escape domestic violence (Canada 10/12/1998).

TOWARD A COMPREHENSIVE EQUALITY FRAMEWORK

49. A General Comment on Equality can readily be developed based on the information already processed by the Committee in its prior country reviews. Much of the evidence of discrimination noted by the Committee in its concluding observations is the product of government failure or incapacity to acknowledge the sources of discrimination and to deal with the necessities of institutional change. Governments fail to respect women's economic, social and cultural rights by, for example, establishing programmes that exclude women from exercising their rights, such as title to housing. They fail to protect women, by bowing to perceived cultural imperatives rather than attempting to encourage change in the culture, as in failing to establish legal protection and physical safety nets for women subject to violence in their homes. They fail to fulfil obligations of equality, by failing to allocate adequate resources to provide women with services and opportunities to which they have a right under the Covenant.

50. In developing a General Comment on Equality, the Committee could refer to the provisions of the CEDAW Convention to illuminate the obstacles to equality and particularly to support an approach that alludes to discriminatory effect.[41]

SUGGESTIONS FOR CONTENT OF A GENERAL COMMENT, PER ARTICLES OF THE COVENANT

51. This paper does not purport to provide an exhaustive outline of all the potential matters to be covered in a General Comment on Equality. The matters cited in this section are representative of suggested approaches to particular issues.

52. With respect to all the rights included in the Covenant, the Convention on the Elimination of All Forms of Discrimination against Women and the General Recommendations of the CEDAW Committee will provide indications of many of the specific components of equal enjoyment of rights.[42]

53. Culture, tradition, religion, and women's human rights. The Committee has recognized in a number of its concluding observations that women face cultural obstacles to their enjoyment of human rights and that religious law cannot be invoked as an excuse for deprivation of rights, despite the lack of explicit language to that effect in the Covenant. A General Comment on Equality might refer specifically, in this context, to CEDAW article 5, pertaining to the obligation to address culture, tradition, and stereotyping that prevent women's full enjoyment of their human rights.

54. National machineries and other mechanisms for promoting and monitoring equality. Many governments have established a national machinery, bureau, or ombud office with a mandate to monitor sex discrimination and promote equality. While some of these efforts are credible and have been effective, others are merely rhetorical. The General Comment might refer to some issues that should be addressed as to efficacy of national machineries: level of funding; status of the machinery within the government (Ministerial level? Inter-ministerial

committee? Department - of what?) Reports to whom? Staffing? Breadth of mandate? Does the office produce research and policy recommendations of its own? Responsibility of other ministries to coordinate with it? Who monitors and how is its performance monitored?

55. Right to work, working conditions, and the right to organize. A General Comment might include, with respect to these rights articulated in articles 6, 7, and 8, statements concerning:

- Pregnancy: States parties have an obligation to prohibit the use of pregnancy tests or questions concerning likely or actual pregnancy as a method of eliminating women from consideration for employment. Women may not be dismissed on grounds of pregnancy.

- Wages: States parties have an obligation to provide by law for equal pay for equal work (wage equality) and for equal pay for work of equal value (wage equity). They must provide for a system of job evaluation that accounts for women's clustering in particular occupations, with the common result of that occupation being under waged relative to required skills.

- Working conditions: States parties have an obligation to provide safe and healthy working conditions for men and women. In most if not all countries, certain industries are disproportionately staffed by women, and to the extent that working conditions in those industries are less safe, less well regulated than others, or unregulated, they constitute sex discrimination. While the conditions in *maquiladoras* are globally notorious, the issues of unsafe conditions, low wages, and obstacles to organizing for collective bargaining in female-dominated industries are not limited to *maquiladoras* and must be addressed.

- In many countries a very high proportion of women work in the informal sector. States parties have an obligation to protect the human rights of these workers. Their rights to organize self-help groups, to work without harassment by police, and to be treated fairly by dispute resolution authorities (community or statutory courts and mediation mechanisms). Social security systems should include mechanisms to provide coverage for them as self-employed workers.

- Affirmative action to remedy the effects of past discrimination in employment (recruitment, hiring, wage disparities) and to ensure fairness in training and promotion opportunities.

- Elimination of sexual harassment in the workplace.

- Reference could be made to the role of corporate codes of conduct in ensuring equality in the workplace. Corporations must be made aware of the international human rights obligations of their host country and the necessity of incorporating human rights principles into their corporate operating procedures.[43]

56. Right to education. With respect to education, the Committee may draw on its own considerable experience and General Comment No. 13, as well as on the mandates in a number of international instruments and the provisions of CEDAW Convention article 10 and the concluding comments of the CEDAW Committee. Key matters that could be addressed include:

- Basic approaches to equal enjoyment of the right to education include reformulation of curricula and educational materials to eliminate stereotyping and gender bias, allocation of equal resources to girls' education, and special encouragement to girls to stay in school.

- Equality in education also requires significant policy commitments to recruitment of skilled teachers and training designed to help teachers understand gender issues in the curriculum, the individual classroom, and the entire school community.

- Achieving equality in education requires addressing the practical and cultural issues that prevent women and girls from attending school, such as son preference, early marriage, and confining girls physically to household or narrow community perimeters.

57. Adequate standard of living. Reference could be made to:

- Resolution 2000/13, "Women's Equal Ownership of, Access to and Control Over Land and the Equal Rights to Own Property and to Adequate Housing", adopted by the Commission on Human Rights in its fifty-sixth session (17 April 2000).

- CEDAW Convention, article 14. This refers specifically to rural women's rights to participate in development planning, agrarian reform and resettlement schemes, and living conditions (housing, sanitation, electricity, water, transport and communications).

- The Committee has adopted General Comments pertaining to the right to adequate housing, the right to food, forced evictions, and the rights of older persons.[44] The content of the General Comment on Equality underscores the issue of equal enjoyment of rights articulated in those General Comments and might refer to them specifically.

58. Right to Health. General Comment 14, adopted in 2000, notes many of the issues relating to women's right to health that could be underscored in the current General Comment:

- Equality in enjoyment of the right to health requires equal access. Because of women's particular circumstances, access requires removal of legal obstacles (consent requirements, unreasonable regulation, legal restrictions on reproductive health provision) and addressing the practical obstacles such as clinic opening times, locations that are accessible to women with limited transportation, and training health professionals to elicit information respectfully.

- The right to be free of violence in the home and in the community is an essential health issue for women.

- Health policy formulation must be based on analysis that includes gender perspectives in the core discussion, sex-disaggregated data, and commitment to addressing cultural issues that affect women's health, such as harmful traditional practices and culturally imposed limitations on access to facilities and skilled practitioners.

59. Protection of marriage and family. With respect to all issues concerning protection and promotion of the family as the basic unit of society, the General Comment might note that the protection of the family may not be promoted at the expense of the human rights of individual family members. The General Comment could allude to CEDAW Convention articles 5, 9, 15, and 16, and CEDAW General Recommendation No. 21 (nationality, legal capacity, and marriage and family law), as well as International Covenant on Civil and Political Rights[45] article 23 and Human Rights Committee General Comment No. 28.[46] In all discussions of the family and women's roles and rights, it is important to bear in mind that the human rights articulated in all the treaties must be seen as complementary, consistently derived from the language of the Universal Declaration of Human Rights.

CONCLUSION

60. Women's equal enjoyment of economic, social and cultural rights must be based on a comprehensive vision of human rights based on full recognition of human capacity for making and acting upon choices. This approach must attend to substantive as well as formal equality, with attention to eliminating the structural disadvantages that always have impeded women's enjoyment of their rights.

61. A comprehensive approach to equality in enjoyment of rights requires attention to the institutional sites of sex discrimination - economic, social, political and cultural structures that impose limitations on women's choices and opportunities. It also requires gender analysis, an examination of the extent to which socially attributed sex roles and expectations inform assumptions about women and men that result in denial of rights. The Convention on the Elimination of All Forms of Discrimination against Women and its jurisprudence can be taken as a detailed indication of sites of discrimination and an elaboration of the standard of equality stated in the Covenant.

62. The Committee on Economic, Social and Cultural Rights historically has paid particular attention to women's enjoyment of the rights articulated in the Covenant, in both country reviews and General Comments. Adoption of a General Comment on Covenant article 3, will provide the Committee and the States parties with a framework for consistent and regular examination of these issues. It will indicate clearly that attention to equality must be a fundamental element of every effort to promote, protect and fulfil human rights.

Notes

[1] International Covenant on Economic, Social and Cultural Rights, article 3.

[2] Chairperson, United Nations Committee on Economic, Social and Cultural Rights, 1991-1998. Member of the Committee, 1987-1998.

[3] Philip Alston, addressing a working group in the NGO Forum at the World Conference on Human Rights, Vienna, June 1993.

[4] For an extremely cogent and still relevant discussion of this issue, see H. Charlesworth, C. Chinkin, and S. Wright, "Feminist Approaches to International Law", 85 *American Journal of International Law* 613-45 (1991).

[5] Universal Declaration of Human Rights, GA Res. 217A(III), 10 December 1948.

[6] Draft International Covenants on Human Rights: Report of the Third Committee, A/5365 (17 December 1962).

[7] Gender refers to the social roles and expectations assigned to women and men by virtue of their biology. It is an extremely useful concept to apply in analysing the causes, consequences and remedies for sex discrimination and for considering the substantive content of equality. Gendered assumptions lead to sex discrimination. Substantive equality is achieved by deconstructing gender assumptions and providing opportunities, remedies, and new expectations based on respect for the full human capacity of women and men. See discussion below, p. _.

[8] The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, 20 *Human Rights Quarterly* 691-704 (1998) 691-704 at 693 (para. 6). Hereinafter cited as Maastricht Guidelines.

[9] Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Oxford: Clarendon Press, 1995), at p. 159, notes that the drafting discussions indicated "certainly a feeling that factual equality should be increased ... [citing the statement of the USSR representative that 'equality of rights ... implied the existence of positive rights in all the spheres dealt with in the draft Covenant']." For a systematic exploration of the content and context of substantive equality in relation to enjoyment of economic, social and cultural rights, grounded in women's experience in several regions, see report of the Women's Economic Equality Project, South Africa Consultation, 7-10 December 2000.

[10] The subject of indicators has been much examined, to no satisfactory conclusion. Raw comparative numbers tell very little of the story as to any issue, and as to equality they illustrate even less.

[11] Bina Agarwal, '"Bargaining' and Gender Relations: Within and Beyond the Household", *Feminist Economics*, 3 (1) 1997, 1.

[12] The term "discrimination" must be used with clarity. In some contexts the term has been subdivided, with reference to "indirect discrimination" presumably as opposed to "direct discrimination." Because this language is not in any of the human rights treaties, its use can lead to confusion. The CEDAW Convention (art. 1) refers to discriminatory "effect" indicating the necessity of examining whether policies and laws that are neutral on their face, in fact have discriminatory consequences when applied or fail to address de facto discrimination despite a nominal intent to do so. "Indirect discrimination" should be understood to refer to discriminatory effect.

[13] The basic definition is provided in the Convention on the Elimination of All Forms of Discrimination against Women, article 1: "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." CEDAW, GA Res. 34/180 (18 December 1979). The Maastricht Guidelines cite the CEDAW Convention as the essential standard of equality in enjoyment of economic, social and cultural rights.

[14] _____.

[15] Amartya Sen, *Development as Freedom.*(New York: Knopf, 2000), pp. 10-11.

[16] Ibid., 10.

[17] Ibid., 106-07. "In China", Sen notes, "there is even some evidence that the extent of neglect may have increased sharply in recent years."

[18] Naila Kabeer, *Reversed Realities: Gender Hierarchies in Development Thought*, London: Verso, 1994, 161.

[19] Sen, supra note 12, 190-199. This instrumentalist view of rights, credible but far from comprehensive, has a great deal of currency in economic thinking.

[20] At the time of drafting the Covenant, the language of affirmative action, or temporary special measures to eliminate the effects of discrimination, was in its infancy and had not made its way into international discourse. By the time the CEDAW Convention was drafted, affirmative action had come to the forefront of the discussion. The failure to include this language in a much earlier treaty only indicates that the discourse had not matured, not that the remedy was uncalled for. Craven, supra n. 9 at 184, discusses this matter at length and concludes: "Despite no reference to affirmative action in the text of the Covenant, it is clear from the *travaux préparatoires* that such measures were not intended to be considered discriminatory."

[21] *Achieving the Rights Result: Affirmative Action and the Women's Convention.* Report of the IWRAW consultation, January 1997, p. 2. As of 2001, the CEDAW Committee is in process of adopting a General Recommendation on Article 4 (1) (temporary special measures to eliminate discrimination).

[22] 429 U.S. 125, 97 S.Ct. 401, 50 L.Ed. 343.

[23] Title VII of the Civil Rights Act of 1964 was amended in 1978 to prohibit discrimination on the basis of pregnancy.

[24] See, e.g., Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia*, Cambridge: Cambridge University Press, 1994; Kabeer at 141.

[25] Naila Kabeer, 141.

[26] Ibid., 161-162.

[27] Agarwal, supra note 14. Women's power relations with men also may differ by class, ethnicity, national origin, religion, or subculture; and male hierarchies of power have an impact on enjoyment of rights as well. However, Agarwal's point indicates that women's enjoyment of rights must be examined in light of their particular circumstances as well as their generic identity as women.

[28] Consider the discussion in terms of poverty vs. wealth. Increasing poor people's access to resources does not violate the human rights of rich people. It does, however, diminish their privilege.

[29] See, e.g., CESCR Statement on Globalization and Economic, Social and Cultural Rights (unedited version available on www.unhchr.ch/tbs/doc.nst/, 5 May 1998); CESCR Statement to the Third Ministerial Conference of the World Trade Organization (Seattle, 1999) (E/C.12/1999/9; Poverty and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2001/10, May 2001).

[30] Sen, supra n. 15, is very eloquent on the subject of individuals as agents of development.

[31] Maastricht Guidelines, supra n. 8.

[32] Sandra Liebenberg, "Gender Equality in the Enjoyment of Socio-Economic Rights: A Case Study of the South African Constitution." Paper presented at the Expert Group Meeting on Promoting Women's Enjoyment of their Economic and Social Rights, Turku, Finland, (EGM/WESR/1997/EP.1, November 1997), p. 14.

[33] CESCR article 10 refers to protection of the family as "the natural and fundamental group unit of society." This article should be read in conjunction with CEDAW article 16, elaborating on the principles of equality between the spouses that are indicated by the CESCR article 10 requirement that "marriage must be entered into with the free consent of the intending spouses."

[34] Ibid., p. 15-16. See also Martin Scheinin ("Women's Enjoyment of their Economic and Social Rights: Conceptual Framework for Discussion"), Expert Group Meeting on Promoting Women's Enjoyment of their Economic and Social Rights, Turku, Finland (EGM/WESR/1997/BP.1, November 1997), p. 11: "all entitlements that are characterized as rights must entail some form of third-party enforcement."

[35] ICESCR article 2 (1); CESCR General Comment 3 (E/1991/23); Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (hereinafter Limburg Principles), E/CN.4/1987/17, reprinted at 9 *Human Rights Quarterly* 122-134 (May 1987), paras. 21-24.

[36] Limburg Principles, paras. 22, 37, 38, indicate that efforts to eliminate discrimination must be undertaken immediately.

[37] The CEDAW Committee's Concluding Observations consistently indicate that governments are required to attend to the facts and consequences of women's poverty even where general economic conditions are dismal. See, e.g., Concluding Observations: Dominican Republic (A/53/38, paras. 32-353, May 1998), noting the failure to attempt affirmative action to break women's poverty; Concluding Observations: Bangladesh (A/52/38/Rev.1, paras. 409-464, July 1997) noting poor working conditions, failure to monitor and assess gender concerns included in development plans; Concluding Observations: Venezuela (A/52/38/Rev.1, paras. 27-247, January 1997), noting failure to develop programmes to promote women's interests at grass-roots levels, to change laws that perpetuate patriarchal control, and failure to develop a plan to implement the Beijing Platform, "even strategies in such urgent priority areas as poverty eradication."

[38] Concluding observations of the Committee on Economic, Social and Cultural Rights: Tunisia. 14/05/99. E/C.12/1/Add.36.

[39] Concluding observations of the Committee on Economic, Social and Cultural Rights: Netherlands. 16/06/98. E/C.12/1/Add.25.

[40] Concluding observations of the Committee on Economic, Social and Cultural Rights: Dominican Republic. 12/12/97. E/C.12/1/Add.16.

[41] The Maastricht Guidelines, supra n. 8, para.12, specifically note that "discrimination against women in relation to the rights recognized in the Covenant, is understood in light of the standard of equality for women under the Convention on the Elimination of All Forms of Discrimination

against Women." See also Hanna Beate Schoepp-Schilling, "Some Reflections on the Women's Human Rights Dimension of the ICESCR as Compared to the CEDAW", Background Paper for the EU-China Seminar on Perspectives on Human Rights - with Special Emphasis to Women (September 1999).

[42] For more detailed analysis of the de jure and de facto equality issues with respect to particular rights, see *Assessing the Status of Women: A Manual on Reporting under the CEDAW Convention.* (IWRAW, Commonwealth Secretariat, 2d, ed. 1996; second edition revised and reprinted by the United Nations, 1999).

[43] The United Nations Sub-Commission on the Promotion and Protection of Human Rights currently is engaged in a process of adopting a set of Human Rights Principles for Business Enterprises. The most recent draft, adopted in August 2002 (E/CN.4/Sub.2/2002/X/Add.1, E/CN.4/Sub.2/2002/WG.2/WP1/Add.1), includes a comprehensive background note on the evolution of corporate responsibility codes.

[44] Right to Adequate Housing, CESCR General Comment No. 4, 1991; Rights of Older Persons, General Comment No. 6, 1995; Right to Adequate Housing: forced evictions, 1997; Right to Adequate Food (1999). Compiled in HRI/GEN/1/Rev.1.

[45] GA Res. 2200A (XXI), Doc A/6316 (16 December 1966).

[46] United Nations Doc. CCPR/C/1/Add.10 (2000). Note also that a considerable discussion emerged within the last ten years concerning the potential of women's human rights, as articulated in the CEDAW Convention, to be seen as conflicting with the human rights of children as stated in the Convention on the Rights of the Child. This topic was explored at some length in a series of consultations held in 1998 by IWRAW, UNICEF, Save the Children-Sweden, and the United Nations Division for the Advancement of Women. See *Women, Children and Human Rights: An IWRAW Consultation*, January 1998, and *The Human Rights of Women and Children: Challenges and Opportunities* (report of the Expert Group on Using the CEDAW and CRC Conventions, January 1998) (both available from IWRAW).

Annex A

CESCR Findings: Engendering Economic, Social and Cultural Rights

CESCR Concluding Observations Addressed to States Parties Regarding Implementation of Women's Human Rights: 1993-2001*

Sex-based Discrimination: Articles 2 and 3	Employment: Articles 6 and 7	Social Security: Article 9	Marriage and Family: Article 10	Adequate Standard of Living: Article 11	Physical and Mental Health: Article 12	Violence against Women: Article 12	Education: Articles 13 and 14
Algeria	Algeria	Togo	Algeria	Germany	Argentina	Algeria	Algeria
Bolivia	Argentina	Australia	Cameroon	Italy	Armenia	Argentina	Bolivia
Cameroon	Armenia	Canada	Canada	Kyrgyzstan	Azerbaijan	Bolivia	Cameroon
Dominican Republic	Australia	Switzerland	Congo	Libyan Arab Jamahiriya	Belarus	Bulgaria	Congo
Honduras	Austria	Cyprus	Dominican Republic	Portugal	Bolivia	Cameroon	Egypt
Iran	Belarus	Dominican Republic	Egypt	Togo	Dominican Republic	Congo	Gambia
Jordan	Belgium	Mauritius	Gambia	United Kingdom of Great Britain and Northern Ireland	Georgia	Cyprus	Germany
Korea	Bolivia	Kenya	Iran	Sudan	Guinea	Dominican Republic	Guinea
Kyrgyzstan	Bulgaria		Iraq	Canada	Honduras	Egypt	Iran
Libyan Arab Jamahiriya	Cameroon		Libyan Arab Jamahiriya		Israel	El Salvador	Iraq
Mali	Canada		Mali		Mali	Finland	Mali
Mauritius	China		Mauritius		Mexico	Georgia	Mauritius
Mexico	Colombia		Morocco		Mongolia	Germany	Morocco
Mongolia	Congo		Paraguay		Peru	Guatemala	Peru
Morocco	Cyprus		Philippines		Poland	Guinea	Republic of Korea
Paraguay	Denmark		Republic of Korea		Republic of Korea	Israel	St. Vincent and the Grenadines
Philippines	Dominican Republic		St. Vincent and the Grenadines		Sri Lanka	Italy	Senegal
Republic of Korea	El Salvador		Sri Lanka			Jordan	Solomon Islands
Sudan	Finland		Sudan			Kenya	Spain
Suriname	Georgia		Suriname			Mali	Sudan
Togo	Germany		Togo			Mauritius	Switzerland
Viet Nam	Guatemala		Tunisia			Mexico	Togo
Zimbabwe	Guinea		Zimbabwe			Mongolia	Tunisia
Egypt	Honduras		Jordan			Netherlands	

Sex-based Discrimination: Articles 2 and 3	Employment: Articles 6 and 7	Social Security: Article 9	Marriage and Family: Article 10	Adequate Standard of Living: Article 11	Physical and Mental Health: Article 12	Violence against Women: Article 12	Education: Articles 13 and 14
El Salvador	Hong Kong		Poland			Paraguay	
Gambia	Iceland		Cyprus			Poland	
Guatemala	Iran					Portugal	
Hong Kong	Iraq					Republic of Korea	
Canada	Israel					Russian Federation	
Congo	Jordan					Sri Lanka	
Iraq	Kenya					Sudan	
Netherlands	Korea					Sweden	
Sri Lanka	Kyrgyzstan					Switzerland	
Tunisia	Libyan Arab Jamahiriya					Togo	
United Kingdom of Great Britain and Northern Ireland	Luxembourg					Tunisia	
	Mali					United Kingdom of Great Britain and Northern Ireland	
	Mauritius					Ukraine	
	Mexico					Uruguay	
	Mongolia					Venezuela	
	Morocco						
	Netherlands						
	Norway						
	Paraguay						
	Peru						
	Philippines						
	Poland						
	Portugal						
	Portugal (Macau)						
	Republic of Korea						
	Russian Federation						
	St. Vincent and the Grenadines						
	Senegal						
	Solomon Islands						
	Spain						
	Sri Lanka						

Sex-based Discrimination: Articles 2 and 3	Employment: Articles 6 and 7	Social Security: Article 9	Marriage and Family: Article 10	Adequate Standard of Living: Article 11	Physical and Mental Health: Article 12	Violence against Women: Article 12	Education: Articles 13 and 14
	Sudan Suriname Sweden Switzerland Togo Tunisia Ukraine United Kingdom of Great Britain and Northern Ireland Uruguay Viet Nam Zimbabwe						

* This chart contains only specific references to the human rights of women, though a number of observations relating to vulnerable groups, people in poverty and children also are relevant to the rights of women.

CONCLUDING OBSERVATIONS: THE COMMITTEE'S RECORD ON WOMEN[a]

The Committee has questioned governments on a number of gender issues in its country reviews. The following selected examples illustrate some of the matters regularly noted.

Articles 6, 7 and 8: Work, Working Conditions and the Right to Organize

- In the Dominican Republic (06/12/96), Mexico (08/12/99), Poland (16/06/98) and Bulgaria (08/12/99), the Committee noted the persistence of required pregnancy tests and/or the arbitrary dismissal of pregnant women.

- In Armenia (08/12/99), women are more likely to be unemployed than men, even though women are generally more educated.

- The Committee reports that women earn less than men for equal work almost everywhere. In Colombia (06/12/95) and Poland (16/06/98), for example, women earned about 30 per cent less than their male counterparts.

- Sweden (07/06/95), Portugal (Macau) (06/12/96) and Luxembourg (12/12/97) had not ratified ILO Conventions that guarantee women equality in the workforce.

- Women are severely underrepresented in the Solomon Islands (14/05/99) in both the public and private spheres. There are no women at the ministerial or subministerial level, one in 47 Parliament members is a woman, and only three per cent of managers and administrators are women.

- Women are disproportionately represented in maquilas and Export Processing Zones (EPZs) in many countries, such as Honduras (11/05/2001) and Guatemala (28/05/96). These workers face poor working conditions, very low wages, few benefits and no job security.

Article 9: Social Security and Social Insurance

- Women in Togo (09/05/2001) do not have the same rights to social security as men, especially to pension benefits.

Article 10: Protection of Marriage and Family

- In Congo (23/05/2000), adultery is illegal for women, but not always for men. Also, the law promises a woman only 30 per cent of her deceased husband's estate; often, she gets none of it.

- The Egyptian (23/05/2000) divorce law disadvantages women.

- Inheritance laws have been declared discriminatory in Morocco (01/12/2000), Iraq (12/12/97), Cameroon (08/12/99), Tunisia (14/05/99), Togo (09/05/2001), and Sri Lanka (16/06/98). In Sri Lanka, law requires equal inheritance among siblings, but married women are customarily discriminated against.

- A woman's right to transmit her nationality to her child or husband is restricted in Cyprus (04/12/98), Egypt (23/05/2000), Jordan (01/09/2000), Poland (16/06/98) and the Republic of Korea (11/05/2001).

- Switzerland (07/12/98) does not offer its women adequate maternity benefits.

- If women have few rights in marriage, they have fewer in divorce. Women are discriminated against in the dissolution of marriage in many countries, such as Algeria (08/12/95) and the Philippines (07/06/95).

Article 11: Standard of Living-Adequate Housing, Food, and Clothing

- Single female heads of household have not benefited from agrarian reform and government housing in the Dominican Republic (06/12/96).

- Displaced people in Sudan (01/09/2000), most of whom are women and children, have suffered without adequate housing, food, or clothing.

- The Committee considered the "small-house policy" in the United Kingdom of Great Britain (21/12/94) discriminatory against women.

Article 12: Physical and Mental Health

- In the Republic of Korea (11/05/2001), the effects of "son preference" (e.g. induced abortions) restrict women's reproductive rights and are harmful to their physical and mental health.

- Female Genital Mutilation (FGM) persists in many countries, despite measures taken against it. Some of the countries still practicing FGM are: Guinea (28/05/96), Mali (21/12/94), Egypt (23/05/2000), Togo (09/05/2001), Cameroon (08/12/99) and Nigeria (16/06/98). The Committee reported that 50 per cent of Nigeria's young women undergo FGM. That figure is 75 per cent in Mali.

- Domestic violence remains a significant problem in most countries. One third of women in Mongolia (01/09/2000) have experienced domestic violence. The Committee also reported 680,000 cases per year in the United Kingdom of Great Britain and Northern Ireland (04/12/97) and 200,000 cases per year in Israel (04/12/98). The Committee has repeatedly emphasized that estimates are generally much lower than the actual occurrence.

- Illegal abortion is the fourth highest cause of death for women in Mexico (08/12/99).

Article 13: Education

- Women are disproportionately illiterate in many developing countries. In Tunisia (14/05/99), 42 per cent of women are illiterate - almost twice as many as illiterate Tunisian men. Of the illiterate in Gambia (31/05/94), 90 per cent are women.

- Women face both legal and customary obstacles to education. In Mali (21/12/94), women receive only 29 per cent as much education as males. In Gambia (31/05/94), only one third of primary school students are girls and only one fourth of high school students.

Article 15: Cultural Life and the Benefits of Scientific Progress

- The Committee has not yet explored in any depth how women are discriminated against in their rights to cultural production, the benefits of science, and intellectual property.[b] It did express concern that women in Iran (09/06/93) were prohibited from studying certain fields such as engineering. This affects their abilities to benefit from science and high-paying jobs in many scientific fields.

- The Committee would certainly find discrimination against women in access to computer technology. A great deal of progress has been made in improving women's access to computer training, but more thorough investigation is needed.

Notes

[a] These lists are representative and do not include all the Committee's conclusions concerning gender issues.

[b] The Committee currently is engaged in development of a General Comment on intellectual property. Research related to a general comment on article 15 (1), right to take part in cultural life, is in process.